

Gaza, Anne

From: Gaza, Anne
Sent: Monday, March 19, 2007 5:13 PM
To: Dick Kirk; Cottrell, Frederick; Jaclyn M. Mason; jbove@cblh.com; jheisman@cblh.com
Cc: Christenson, Cass; meridethf@gtlaw.com; hov@gtlaw.com; krietzmanm@gtlaw.com
Subject: RE: LG Philips LCD Co., Ltd v Tatung Company, et al., C.A. No. 04-343-JJF

While we had hoped to not have to burden the Court with an issue we believe was squarely addressed by Ms. Ho's declaration, we will plan to discuss these issues with the Special Master this evening.

Best regards,
Anne

Anne Shea Gaza, Esquire
RICHARDS, LAYTON & FINGER
Phone: (302) 651-7539
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-----Original Message-----

From: Dick Kirk [mailto:rkirk@bayardfirm.com]
Sent: Monday, March 19, 2007 5:06 PM
To: Gaza, Anne; Cottrell, Frederick; Jaclyn M. Mason; jbove@cblh.com; jheisman@cblh.com
Cc: Christenson, Cass; meridethf@gtlaw.com; hov@gtlaw.com; krietzmanm@gtlaw.com
Subject: RE: LG Philips LCD Co., Ltd. v. Tatung Company, et al., C.A. No. 04-343-JJF

Anne:

We think that with depositions continuing it would be useful to get the Special Master's guidance. Ms. Ho's declaration does not completely answer our concerns. If you feel that you need to bring parts of the Kim deposition to the Special Master's attention, I believe he has the entire transcript already.

Dick Kirk

-----Original Message-----

From: Gaza, Anne [mailto:gaza@RLF.com]
Sent: Monday, March 19, 2007 4:23 PM
To: Dick Kirk; Cottrell, Frederick; Jaclyn M. Mason; jbove@cblh.com; jheisman@cblh.com
Cc: Christenson, Cass; meridethf@gtlaw.com; hov@gtlaw.com; krietzmanm@gtlaw.com
Subject: RE: LG Philips LCD Co., Ltd. v. Tatung Company, et al., C.A. No. 04-343-JJF
Importance: High

Dick,

Having reviewed your email below, we believe that you are generally correct in your understanding of deposition practice in Delaware. Even in Delaware, however, we sometimes will go beyond merely "objection as to form" and add something short like: compound question, asked and answered etc.... However, we agree that any comments made by the defending attorney must be very short and that coaching a witness is strictly prohibited. Notably, Mr. Bono has engaged in a practice of making numerous objections where he goes beyond merely stating "Objection, Form" while defending LPL witnesses. See, e.g., 2/28 Kim transcript, pages 10-27.

Of course, when discussions happen between counsel and the witness during breaks in a deposition, if the witness is being coached or asked to change answers, then the court may allow questions into what was actually discussed between counsel and the witness during the break.

That was not the case, however, during Mr. Kevin Ho's deposition and I have attached a declaration from Valerie Ho addressing the circumstances surrounding her instruction to Mr. Ho that he not answer a particular question posed to him by Mr. Christenson.

In light of Ms. Valerie Ho's declaration, we request that you withdraw your objections to Mr. Ho's deposition and cancel the hearing for this evening. Given the timing, please let me know whether you will withdraw your objections by 5 p.m. EST so that we can take appropriate steps, if necessary, to put the complete record before the Special Master, including, but not limited to, Mr. Bono's behavior during the deposition of Mr. Kim.

I look forward to hearing from you.

Best regards,
Anne

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Richards, Layton and Finger, P.A. is not providing any advice with respect to any federal tax issue in connection with this matter.

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From: Dick Kirk [mailto:rkirk@bayardfirm.com]
Sent: Monday, March 19, 2007 11:33 AM
To: Cottrell, Frederick; Gaza, Anne; Jaclyn M. Mason; jbove@cblh.com; jheisman@cblh.com
Cc: Christenson, Cass
Subject: LG Philips LCD Co., Ltd. v. Tatung Company, et al., C.A. No. 04-343-JJF

Dear counsel:

Judge Poppiti charged us to discuss deposition behavior with our respective teams.

When Judge Poppiti refers to Delaware cases governing attorney and witness behavior at depositions, I believe he is referring to Tuerkes-Beckers, Inc. v. New Castle Associates, 158 F.R.D. 573 (D.Del. 1993), a decision by Judge McKelvie; Hall v. Clifton Precision, 150 F.R.D. 525 (E.D. Pa. 1993), a decision by Judge Gawthrop of the Eastern District of Pennsylvania that is known to and has been applied by the Judges of the District of Delaware; and In Re: Asbestos Litigation, 492 A.2d 256 (Del.Super. 1985), a decision by Judge Poppiti while he was on the Superior Court.

I think a fair summary of Delaware deposition practice is this:

First, an attorney defending a deposition should state objections succinctly, for example by saying only "objection, form." It is not proper to make an objection that suggests a response to the witness.

Second, an attorney defending a deposition may only instruct a witness not to answer a

question (1) when the answer will reveal a privileged communication or (2) when the attorney intends to terminate the deposition and seek a ruling from the court about the area of inquiry.

Third, an attorney defending a deposition may not consult with the witness during a break or continuance of the deposition about the testimony already given or anticipated to be given. At the resumption of a deposition following a break or continuance, the questioner may inquire of the witness whether any such consultation has occurred and with whom it has occurred (without inquiring into the specifics of the consultation if any did occur).

Do you have a different view of what is considered proper practice for depositions in Delaware cases?

These are the subjects that I expect to come up during today's teleconference.

Dick Kirk

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